



BLACKFEET NATION

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BLACKFEET TRIBAL BUSINESS COUNCIL

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TESTIMONY OF THE BLACKFEET TRIBE

IN SUPPORT OF HB 161 RATIFYING

THE WATER RIGHTS COMPACT

Mr. Chairman, and members of the Committee, I am honored to be here on behalf of the Blackfeet Tribal Business Council to support House Bill 161 ratifying the Blackfeet Water Right Compact.

My name is Roger Runningcrane, and I am a member of the Blackfeet Tribal Business Council. As a member of the Blackfeet Council, I was extensively involved in the negotiations leading to the Water Rights Compact.

The Blackfeet Water Rights Compact is the culmination of many, many years of work by the Tribe on a matter of critical importance to the future of the Blackfeet people. The Compact secures the *Winters* reserved water rights of the Tribe, and establishes one of the critical elements necessary for the development of a self-sustaining economy on the Blackfeet Reservation.

The Compact will not become effective until it is approved by the Legislature, by the United States Congress and by the Tribal membership. State legislative approval, which this bill initiates, is the first step in obtaining the approvals necessary to finalize the Blackfeet Compact. We still have a ways to go, but we are very pleased to be taking this step here today.

The Significance of Water to the Blackfeet People

Water is critical to the Blackfeet People. It is central to the culture and traditions of the Tribe, and to economy of the Tribe. It is an essential element of our way of life, and it is crucial to our continuing survival culturally, traditionally and economically.

The Blackfeet Reservation

The Blackfeet Reservation was formally established by Treaty with the United States on October 17, 1855 (11 Stat. 657). The present reservation is only a small part of the historical aboriginal territory of the Blackfeet Tribe which encompassed much of the present State of Montana, and a large area into Canada. The Tribe's reservation was gradually reduced to the present 1.5 million acre Reservation through various federal actions. The Tribe has over 16,000 members, over half of whom live on the Reservation. Tribal unemployment consistently averages around 60-70%. Ranching and associated irrigated agriculture is a mainstay of the economy. Other resources, including oil and gas, timber and grazing leases, also contribute to the economy. The Tribe continues in its efforts to identify and develop new economic opportunities. The water resources of the Reservation are an integral part of these efforts.

Water Resources

Several significant water drainages are encompassed within the Reservation. The St. Mary and Milk drainages arise in the northwest and flow through the Reservation and then into Canada. The Milk River re-enters the United States near Havre. Cut Bank, Two Medicine, Badger and Birch all flow easterly through the Reservation and into the Marias River at the eastern boundary of the Reservation. Birch Creek is the southern boundary of the Reservation.

The average annual water supply on the Reservation is nearly 1.5 million acre feet. The St. Mary and Milk Rivers are included in the 1909 Boundary Waters Treaty, and Birch Creek is subject to a federal court decree issued in the 1908 Conrad Investment case.

Existing water use on the Reservation includes irrigation under the BIA Blackfoot Irrigation Project, and other irrigation throughout the Reservation, livestock use, wildlife and recreational use, and domestic, municipal and industrial use. The Reservation also has several significant lakes, several of which have blue-ribbon fisheries, and extensive wetlands. Further water use on the Reservation has been hampered by inadequate storage available to the Tribe, and significant condition problems relating to the Blackfoot Irrigation Project. The Blackfoot Irrigation Project, like the St. Mary diversion facilities that the State seeks to have rehabilitated, are nearly a hundred years old and suffer from many of the same condition problem. The Tribe expects to be able to increase storage on the Reservation and rehabilitate and expand existing irrigation as part of an overall water rights settlement.

Water Rights Negotiations

The Tribe's water rights have been the subject of negotiations among the Tribe, the Montana Reserved Water Rights Compact Commission and a Federal Negotiation Team for well over a decade. The Tribe and the State completed Compact negotiations in December, 2007. Both the Tribe and State agreed that the Compact provided the basis to move forward to obtain the necessary approvals to finalize the Compact.

The Tribe and the State also entered into a separate agreement relating to Birch Creek, by which the Tribe will defer additional use of Birch Creek water for fifteen years, and then will

provide water to non-Indian Birch Creek water users from an enlarged Four Horns Reservoir, one of the storage facilities of the Blackfeet Irrigation Project. This Agreement will provide for mitigation of impacts to Birch Creek water users, and at the same time will provide an economic benefit to the Blackfeet Tribe. The agreement is conditioned on congressional approval of the Compact, funding for four Horns.

Terms of the Compact

Under the terms of the Compact, the Winters reserved water rights are secured to the Tribe basin by basin. The main elements of the Compact include:

1. Protection of the cultural and religious uses of water, and recognizes all existing uses by the Tribe and its members, and
2. Minimum in stream flows on all stream.
3. Establishment of the Tribal Water Right in the following amounts:
 - In the Milk, Cut Bank. Badger and Two Medicine, all of the natural flow and groundwater less the amounts necessary to fulfill state water rights;
 - In St. Mary, 50,000 acre feet, plus additional amounts in Lee Creek and Willow Creek, and additional amounts remaining after satisfaction of state water rights;
 - In Birch Creek, 100 cfs, plus 25 cfs for in stream flows during the irrigation season and 15 cfs during the non-irrigation season, plus additional amount at the end of the system; and
 - An allocation of Tiber Dam water in amount approved by Congress.

The Compact also provides for tribal administration of tribal water rights and the state administration of state water rights is provided for under the compact. Disputes between tribal and state water rights will be brought to a Compact Board which is similar to the Compact Boards in other tribal settlements in the State.

State water right holders are protected by no call provisions on all streams. These provisions protect non-irrigation uses, and some irrigation uses. There are also phase-in provisions for new Tribal uses on the Milk and Cut Bank Creek. There is also a separate Birch Creek Management Plan in Appendix A to the Compact that will provide for more specific management on that boundary stream.

State and Federal Contributions

The State has committed to provide \$20 million as a state contribution, \$4 million of which is appropriated in this legislation. As a separate mitigation measure, the State appropriated \$14.5 million for the Birch Creek Agreement to be paid to the Tribe when the Compact is approved by all parties and becomes final. An additional \$500,000 was made available to begin Four Horns studies. As part of the federal legislation approving the Compact, the Tribe also expects a substantial federal contribution to the overall settlement.

CONCLUSION

The Blackfeet Water Rights Compact represents an historic milestone for the Blackfeet Tribe. In the 150 years since the Blackfeet Reservation was established in 1855, the Tribe has received little benefit from reservation water resources, while our federal trustee has allowed and significantly subsidized development off the reservation. This Compact, which permanently

secures the water rights of the Tribe, together with the state and federal contributions to the settlement, will finally provide the means for the Tribe fully utilize our water reservations to provide a permanent homeland for the Blackfeet People.

As previously indicated, approval by the State Legislature is only the first step in achieving a final Compact. The Blackfeet Tribe fully supports HB 161 as moving this first step of state approval forward and on the path to a final Compact.

Our next step will be to obtain federal approval. And most importantly, we must then present the comprehensive settlement as reflected in the Compact, this state legislation and the federal legislation, to the members of the Blackfeet Tribe for their approval. We are confident, that the Compact, together with the state and federal contributions to the overall settlement, will meet the expectations of the Blackfeet People and provide the basis for their approval.